



February 1, 2002

Ms. Shelly Eversole  
Winstead  
100 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2002-0481

Dear Ms. Eversole:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158318.

The Brushy Creek Municipal Utility District (the "MUD") received a request for a copy of a June 28, 2001 memorandum prepared by a named attorney for the MUD and for any "correspondence to or from the Attorney General related to this subject which may have prompted the preparation of this memorandum." You inform us that a draft of the memorandum was provided to the requestor in response to an earlier request, but you claim that since the time of that earlier request, the memorandum has been finalized and is excepted from public disclosure under sections 552.107 and 552.111 of the Government Code. We note that if the MUD maintains any other responsive information that was not submitted to this office, that information must be released at this time. *See* Gov't Code §§ 552.301, .302. We have considered the exceptions you claim and reviewed the submitted information.

We first address your section 552.107 claim. Section 552.107(1) excepts from disclosure information that an attorney of a political subdivision cannot disclose because of a duty to the client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107(1) protects them only to the

extent that such communications reveal the attorney's legal opinion or advice. ORD 574 at 3.

In this instance, you represent that the memorandum at issue was prepared by one attorney for use by another in advising the MUD as the client. You further represent that the memorandum consists of the legal advice and opinions rendered for the MUD. Having reviewed your comments and the memorandum, we agree that it reveals the attorney's legal opinion or advice. Therefore, you may withhold the memorandum in its entirety under section 552.107(1).<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

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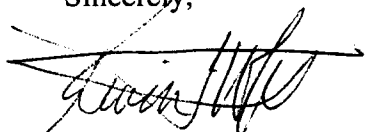
<sup>1</sup>Because section 552.107(1) is dispositive, we need not address your claim under section 552.111.

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin J. White", is written over a horizontal line.

Kevin J. White  
Assistant Attorney General  
Open Records Division

KJW/seg

Ref: ID# 158318

Enc. Submitted documents

c: Mr. John C. McLemore  
8400 Cornerwood  
Austin, Texas 78717  
(w/o enclosures)